

REMARKS

The above amendments and these remarks are being submitted in response to the final Office action dated November 25, 2005 that was issued in connection with the above-identified patent application. Prior to entry of the above amendments, claims 1-33 were pending in the application and stand rejected as being obvious over various combinations of the references cited in the Office action. By the above amendments, claim 1 is amended, claims 11-12 and 23-33 are cancelled without prejudice, and new claims 34-46 are added. Applicants submit that no new matter has been introduced with the above amendments.

As an initial matter, Applicants thank the Examiner for his time and comments in telephone interviews with Applicants' undersigned attorney on March 22 and 24, 2006. In the interviews, the cited references to Romanowski and Schneider were discussed in view of the subject matter recited in the amended claim 1. No agreement was reached regarding the allowability of the claims.

In the Office action, claims 1-13 and 21-33 were rejected as being obvious over U.S. Patent No. 4,712,594 to Schneider in view of U.S. Patent No. 5,811,359 to Romanowski; and claims 14-20 were rejected as being obvious over Schneider in view of Romanowski and further in view of U.S. Patent No. 5,074,601 to Spors et al. Applicants have studied the cited references in view of the reasons expressed in the Office action and the interviews with the Examiner, and Applicants respectfully traverse and request reconsideration of the rejections for at least the reasons presented below. Briefly, the cited references not only teach away from the recited subject matter, but also fail to teach

or suggest all of the recited subject matter in either of the amended independent claims, much less the dependent claims that depend therefrom.

Amended claim 1 is presented below and is directed to a personal hydration system that includes a multilayer chemically resistant fluid reservoir that has a downstream assembly extending therefrom and which is formed from a multilayer, multilaminate material having at least one layer of waterproof material on each side of a chemically resistant layer that includes ethylene vinyl alcohol, with the material being sufficiently clear that fluid within the reservoir may be viewed through the material from external the reservoir.

1. (Currently Amended) A personal hydration system, comprising:

a flexible fluid reservoir having a body portion with an internal compartment adapted to receive a volume of drink fluid, wherein the reservoir includes a selectively sealable fill port having an opening through which drink fluid may be added to the compartment and an exit port through which drink fluid may be selectively drawn from the compartment, wherein the reservoir is formed from a multilayered chemically resistant material that includes at least one chemically resistant layer containing ethylene vinyl alcohol and at least one waterproof layer on each side of the at least one layer comprising ethylene vinyl alcohol, wherein the chemically resistant layer is adapted to be resistant to at least mustard and sarin chemical agents, wherein the material is a multilaminate structure, and further wherein the material is sufficiently clear that drink fluid in the internal compartment may be viewed through the material from external the reservoir; and

an elongate downstream assembly in fluid communication with the exit port and adapted to selectively dispense drink fluid to a user, wherein the downstream assembly comprises an elongate drink tube and at least one of a bite-actuated mouthpiece from which a user may selectively draw drink fluid from the compartment by sucking upon the mouthpiece or a fitting adapted to interconnect the drink tube with a gas mask.

As discussed above, claim 1 stands rejected under 35 U.S.C. § 103 as being obvious over Schneider in view of Romanowski. As expressed in the Office action, Schneider is cited for providing in Figs. 10-12, 14 and 20 a liquid storage and delivery

system that includes a multilayered container with a flexible reservoir 82, a sealable fill port 83, exit ports 84, and an elongated downstream assembly 19 that is in fluid communication with the exit port and which has a mouthpiece and/or fitting adapter 118. However, and as the Examiner correctly recognizes, Romanowski is silent about the type of material from which the container is formed, and as such fails to disclose or suggest the multilayer construction recited in amended claim 1, which includes a chemically resistant layer that contains ethylene vinyl alcohol and which is resistant to at least mustard and sarin chemical agents and at least one waterproof layer on each side of the chemically resistant layer. Romanowski is cited for disclosing a multilayer material for making protective garments, with the material including a layer of chemically resistant material. Therefore, the rejections require modification of the container of Schneider to include the material of Romanowski.

Applicants believe it is important to reiterate the Examiner's burden in establishing a prima facie case of obviousness because there simply is no reason to make the proposed combination except to reconstruct the subject matter recited in amended claim 1. Furthermore, doing so teaches away from the disclosure of both of the references and requires additional structure that would not be required but for the proposed combination. In applying 35 U.S.C. § 103, the references must suggest the desirability, and thus, the obviousness of making the combination. As stated by the Federal Circuit in In re Fritch, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992):

[T]he Examiner bears the burden of establishing a prima facie case of obviousness based upon the prior art. 'The Examiner can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.'

... Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so. ... This court has previously stated that '[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the invention.'

Id. at 1265-1266 (citations omitted). Moreover, the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention. Hodosh v. Block Drug Co., Inc., 786 F.2d 1136 (Fed. Cir. 1986).

Hindsight reconstruction is evidenced by defining the problem in terms of its solution. Monarch Knitting Machinery Corp. v. Sulzer Morat GmbH, 139 F.3d 877, 882 (Fed. Cir. 1998). In each of the obviousness rejections set forth in the Office action, the rejections are predicated upon solving the problem of "protect[ing] the user from exposure to hazardous environments, while the user can consume nourishment liquids." Applicants submit that this approach is exactly what the cited case law cautions against, as the problem has been defined based upon the solution recited in claim 1 (and pursuant to the recent interviews, also in view of amended claim 1). Accordingly, the rejections are not properly supported and should be withdrawn. More specifically, the problem expressed in the Office action, namely, providing a personal hydration system that is resistant to chemical agents, has been defined in terms of the solution presented in claim 1, namely, providing a multilayered fluid reservoir which includes at least one chemically resistant layer that comprises ethylene vinyl alcohol and which is resistant to at least mustard and sarin chemical agents, and at least one waterproof layer on each side of this chemically resistant layer. Applicants submit that the claimed multilayer construction is but one of many possible solutions to the problem of chemical resistance in hydration

systems. Thus, by defining the problem in terms of its solution, the Examiner has presumed the solution to the problem. Furthermore, this ignores the lack of any suggestion or motivation in the prior art to make the proposed combination of the prior art references. See Id.

Applicants note that there is no teaching or motivation to combine the material disclosed in Romanowski with the liquid storage system of Schneider. Perhaps more specifically, Romanowski discloses a fire resistant material that also includes chemically resistant properties. The material is specifically stated to be designed to be exterior surface cover, such as may be used for clothing, tents, and equipment covers. In contrast, Schneider discloses a flexible liner for rigid cases. Therefore, during use, the liner is at all times encased within a rigid shell. Accordingly, there is no need, much less motivation, to provide the fire retardant and/or exteriorly durable construction of Romanowski in the liner of Schneider. Furthermore, Schneider teaches away from such a combination because the liner in Schneider is already constructed of a surface layer of polyethylene terephthalates to provide chemical resistance (col. 11, lines 37-45). Therefore, Schneider already provides a liner construction that solves the problem presented by the Examiner. Furthermore, because of its encasement in a rigid shell, there is no need, much less motivation, to replace the liner of Schneider with the multilayer fire retardant construction disclosed in Romanowski.

Amended claim 1 recites additional subject matter that reinforces the reason that the cited references should not properly be combined. Amended claim 1 further recites that the material is sufficiently clear that the drink fluid in the material may be viewed through the material. Applicants recognize that Schneider already discloses a clear

material. However, this material has only been waterproofed on one side. The reason for this is that the material of Schneider forms a liner that is encased in a thick plastic or metal container. Since the liner in Schneider is protected by an outer case, the addition of another liner layer would be unnecessary and redundant. In contrast, Romanowski's material not only explicitly includes a garment layer, but it also consistently refers to the layers that are applied to the garment layer as being colored, such as to have a camouflage pattern, in addition to the natural milky color of the material. Therefore, the proposed combination requires that the clear, chemically resistant material of Schneider be replaced with a material that requires an additional layer of waterproofing, uses a different chemically resistant layer, is colored and not sufficiently clear for viewing drink fluid therethrough, and which includes a garment layer that further teaches away from the proposed combination and which further discloses that the material does not permit viewing therethrough. Applicants submit that there simply is no reason, much less the required teaching or motivation, to make the proposed combination other than to reconstruct the subject matter recited in amended claim 1.

In addition to the reasons expressed above, Applicants submit that the proposed combination is also improper because it requires selectively extracting only a portion of the material of Romanowski. Because Romanowski is specifically directed to a garment or fabric that includes a coating, it follows that extracting just portions of the coating is not permissible, especially when the extracted portion is used in a different application than in Romanowski. For at least the above reasons, Applicants request that the rejection of claim 1 be withdrawn.

Claims 2-22 and 34 depend from claim 1 and therefore should be allowed when claim 1 is allowed. Applicants want to briefly address the rejections that require the further addition of Spors, which is cited for disclosing a quick-connect assembly that is used with a hydration system. Applicants respectfully submit that there is no reason to add this assembly other than in view of the pending claims. Furthermore, even if the purported teaching or motivation is believed to be present, the quick connect assembly recited in many of the pending claims is clearly distinguishable from the structure of Spors. Therefore, should the rejections be maintained, Applicants request that the Examiner identify how Spors discloses or suggests the specific structure recited in claims 14-20 (and new claims 40-45).

New claim 35 is similar to prior claim 1, and therefore should be allowable over the cited references for at least the above discussed reasons why the references fail to teach or disclose a hydration system reservoir that is formed from a multilaminate chemically resistant material that includes a layer containing ethylene vinyl alcohol between layers of waterproof material. New claim 35 further recites that the reservoir includes an RF-welded perimeter region. Neither reference discloses sealing the perimeter of a liquid reservoir, much less the chemically resistant multilaminate reservoir of new claim 35 with a RF-welding process. Applicants further submit that neither reference discloses a fluid reservoir having a sealed perimeter region. Applicants submit that this is because Schneider merely discloses a liner that is formed by an entirely different process and that Romawski discloses fabrics that are not used for liquid containment. At most, Schneider discloses a two-layered liner having an inner, food grade layer and an outer, chemically resistant layer (col. 11, lines 41-45). Applicants

recognize that Schneider briefly mentions heat welding of the liner to couplings (col. 9, lines 37-43). However, only one layer of heat-weldable material would be useful for attaching the liner to couplings since the liner would be inserted into the coupling or the coupling would be inserted into the liner. Also, Schneider does not disclose RF welding of the perimeter of the reservoir. Furthermore, there is no disclosure in Romanowski as to how the materials are joined, and they are likely sewn or laminated together to form the desired tent or garment. Accordingly, Applicants request allowance of new claim 35.

New claims 36-46 depend from claim 35 and therefore should be allowed when claim 35 is allowed.

In view of the above, Applicants submit that all of the issues raised in the final Office action have been addressed and overcome. If there are any remaining issues or if the Examiner has any questions, Applicants' undersigned attorney may be reached at the number listed below. Similarly, if the Examiner believes that a telephone interview may be productive in advancing prosecution of the present application, the Examiner is invited to contact Applicants' undersigned attorney at the number listed below.

Respectfully submitted,

KOLISCH HARTWELL, P.C.



David S. D'Ascenzo
Registration No. 39,952
Customer No. 23581
Kolisch Hartwell, P.C.
520 S.W. Yamhill Street, Suite 200
Portland, Oregon 97204
Telephone: (503) 224-6655
Facsimile: (503) 295-6679